

FILED  
U.S. DISTRICT COURT  
DISTRICT OF WYOMING

Page 2

2020 SEP -9 PM 1:01

PETITION UNDER 28 U.S.C. ' 2254 FOR WRIT OF  
HABEAS CORPUS BY A PERSON IN STATE CUSTODY

MARGARET BOTKINS, CLERK  
CASPER

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF WYOMING**

Name (under which you were convicted): Justin W. Bittleston	Docket or Case No.: 20-cv-171-SWS
Place of Confinement: WDOC-Parolee	Prisoner No.: 32115
Petitioner (include the name under which you were convicted)  JUSTIN WADE BITTLESTON	Respondent (authorized person having custody of petitioner)  v  The Attorney General of the State of WY

PETITION

1. (a) Name and location of court that entered the judgment of conviction you are challenging:

**Natrona County District Court, Seventh Judicial District  
115 North Center  
Casper, Wyoming 82601**

(b) Criminal docket or case number (if you know): CR-20865-A

2. (a) Date of the judgment of conviction (if you know): 07-30-2018

(b) Date of sentencing: 07-30-2018

3. Length of sentence: Three (3) to Six (6) Years.

4. In this case, were you convicted on more than one count or of more than one crime? ☒ Yes ☐ No

5. Identify all crimes of which you were convicted and sentenced in this case:

**Count One (1): Stalking, a felony, in violation of W.S. 1977, as amended § 6-2-506(b)(e)(i).**

**Count Two (2): Burglary, a felony, in violation of W.S. 1977, as amended § 6-3-301(a).**

6. (a) What was your plea? (Check one)

(1) Not Guilty ☒ (3) Nolo contendere (no contest) ☐

(2) Guilty ☐ (4) Insanity plea ☐

Receipt # CAS002474  
Summons: ☐ issued  
☐ not issued

(b) If you entered a guilty plea to one count or charge and a not guilty plea to another count or charge, what did you plead guilty to and what did you plead not guilty to? **Not Applicable.**

(c) If you went to trial, what kind of trial did you have? (Check one) ☒ Jury ☐ Judge only

7. Did you testify at a pretrial hearing, trial, or a post-trial hearing? ☒ Yes ☐ No

8. Did you appeal from the judgment of conviction? ☒ Yes ☐ No

9. If you did appeal, answer the following:

(a) Name of court: **Wyoming State Supreme Court**

(b) Docket or case number (if you know): **S-18-0233**

(c) Result: **Mandate Affirming Judgement.**

(d) Date of result (if you know): **07-08-2019**

(e) Citation to the case (if you know): **I Do Not Know.**

(f) Grounds raised: **Ground 1: Violation of his 5<sup>th</sup> Constitutional Amendment Rights.**

**Ground 2. The detention of Mr. Bittleston may have begun as a Terry stop, but quickly converted to a custodial interrogation where Miranda warnings were required to use his statement as evidence against him.**

(g) Did you file a petition for certiorari in the United States Supreme Court? ☐ Yes ☒ No

If yes, answer the following:

(1) Docket or case number (if you know): **Not Applicable**

(2) Result: **Not Applicable**

(3) Date of result (if you know): **Not Applicable**

(4) Citation to the case (if you know): **Not Applicable**

10. Other than the direct appeals listed above, have you previously filed any other petitions, applications, or motions concerning this judgment of conviction in any state court? ☒ Yes ☐ No

11. If your answer to Question 10 was Yes, give the following information:

(a) (1) Name of court: **Natrona County District Court, Seventh Judicial District**

(2) Docket or case number (if you know): **CR-20865-A**

(3) Date of filing (if you know): **December 6, 2019**

(4) Nature of the proceeding: **Petition for Post-Conviction Relief**

(5) Grounds raised: **Ground 1: Ineffective Assistance of Counsel.**  
**Ground 2: Abuse of Discretion.**

**Ground 3: Failure to Properly Investigate.**

(6) Did you receive a hearing where evidence was given on your petition, application, or motion?  
☐ Yes ☒ No

(7) Result: **Not Applicable**

(8) Date of result (if you know): **Not Applicable**

(b) If you filed any second petition, application, or motion, give the same information:

(1) Name of court: **Not Applicable.**

(2) Docket or case number (if you know): **Not Applicable.**

(3) Date of filing (if you know): **Not Applicable.**

(4) Nature of the proceeding: **Not Applicable.**

(5) Grounds raised: **Not Applicable.**

(6) Did you receive a hearing where evidence was given on your petition, application, or motion?  
☐ Yes ☐ No ☒ Not Applicable

(7) Result: **Not Applicable.**

(8) Date of result (if you know): **Not Applicable.**

(c) Did you appeal to the highest state court having jurisdiction over the action taken on your petition, application, or motion?

(1) First petition: ☒ Yes ☐ No

(2) Second petition: ☐ Yes ☐ No

(3) Third petition: ☐ Yes ☐ No

(d) If you did not appeal to the highest state court having jurisdiction, explain why you did not:

12. For this petition, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground.

CAUTION: To proceed in the federal court, you must ordinarily first exhaust (use up) your available state-court remedies on each ground on which you request action by the federal court. Also, if you fail to set forth all the grounds in this petition, you may be barred from presenting additional grounds at a later date.

Please go to Ground One

**GROUND ONE: INEFFECTIVE ASSISTANCE OF COUNSEL**

(a) Supporting facts (Briefly summarize your claim. You may provide additional argument and legal citations in a separate supporting memorandum): **Please See Petition for Post-Conviction, Pages 11-13, Paragraphs (26-34).**

(b) If you did not exhaust your state remedies on Ground One, explain why: **Not Applicable**

(c) Direct Appeal of Ground One:

(1) If you appealed from the judgment of conviction, did you raise this issue? ☒ Yes ☐ No

(2) If you did not raise this issue in your direct appeal, explain why: **Not Applicable**

(d) Post-Conviction Proceedings:

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a State Trial court? ☒ Yes ☐ No

(2) If your answer to Question (d)(1) is Yes, state:

Type of motion or petition: **Petition for Post-Conviction Relief**

Name and location of the court where the motion or petition was filed:

**Natrona County District Court, Seventh Judicial District  
115 North Center  
Casper, Wyoming 82601**

Docket or case number (if you know): **CR-20865-A**

Date of the court's decision: **1-16-2020**

Result (attach a copy of the court's opinion or order, if available): **Denied. See Attached.**

(2) Did you receive a hearing on your motion or petition? ☐ Yes ☒ No

(3) Did you appeal from the denial of your motion or petition? ☐ Yes ☒ No

(4) If your answer to Question (d)(4) is Yes, did you raise this issue in the appeal? ☐ Yes ☒ No

(5) If your answer to Question (d)(4) is Yes, state:

Name and location of the court where the appeal was filed: **Not Applicable**

Docket or case number (if you know): **Not Applicable**

Date of the court's decision: **Not Applicable**

Result (attach a copy of the court's opinion or order, if available):

(6) If your answer to Question (d)(4) or Question (d)(5) is No, explain why you did not raise this issue: **Due to filing Pro-Se and not being properly trained in the Legal Discipline, I was unaware of the fact that I could appeal the Petition for Post-Conviction Relief.**

(e) Other Remedies: Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground One: **Appeal Petition for Post-Conviction Relief.**

**GROUND TWO: ABUSE OF DISCRETION**

(a) Supporting facts (Briefly summarize your claim. You may provide additional argument and legal citations in a separate supporting memorandum): **Please see Petition for Post-Conviction, Page 13, Paragraphs (35–36).**

(b) If you did not exhaust your state remedies on Ground Two, explain why: **Not Applicable**

(c) Direct Appeal of Ground Two:

(1) If you appealed from the judgment of conviction, did you raise this issue? **X** Yes \_\_\_ No

(2) If you did not raise this issue in your direct appeal, explain why: **Not Applicable**

(d) Post-Conviction Proceedings:

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state Trial court? **X** Yes \_\_\_ No

(2) If your answer to Question (d)(1) is Yes, state:

Type of motion or petition: **Petition for Post-Conviction Relief**

Name and location of the court where the motion or petition was filed:

**Natrona County District Court, Seventh Judicial District  
115 North Center  
Casper, Wyoming 82601**

Docket or case number (if you know): **CR-208-65-A**

Date of the court's decision: **1-16-2020**

Result (attach a copy of the court's opinion or order, if available): **Denied. See Attached**

(3) Did you receive a hearing on your motion or petition? \_\_\_ Yes **X** No

(4) Did you appeal from the denial of your motion or petition? \_\_\_ Yes **X** No

(5) If your answer to Question (d)(4) is Yes, did you raise this issue in the appeal? \_\_\_ Yes **X** No

(6) If your answer to Question (d)(4) is Yes, state:

Name and location of the court where the appeal was filed: **Not Applicable**

Docket or case number (if you know): **Not Applicable**

Date of the court's decision: **Not Applicable**

Result (attach a copy of the court's opinion or order, if available): **Not Applicable**

(7) If your answer to Question (d)(4) or Question (d)(5) is No, explain why you did not raise this issue:

- (e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Two: **Appeal & Petition for Post-Conviction Relief**

**GROUND THREE: FAILURE TO INVESTIGATE**

- (a) **Supporting facts** (Briefly summarize your claim. You may provide additional argument and legal citations in a separate supporting memorandum: **Please see Petition for Post-Conviction Relief, Pages 13-15, Paragraph (37-42).**
- (b) If you did not exhaust your state remedies on Ground Three, explain why: **Not Applicable**
- (c) **Direct Appeal of Ground Three:**
- (1) If you appealed from the judgment of conviction, did you raise this issue? **X Yes** \_\_\_ No
- (3) If you did not raise this issue in your direct appeal, explain why: **Not Applicable**
- (d) **Post-Conviction Proceedings:**
- (1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court? **X Yes** \_\_\_ No
- (2) If your answer to Question (d)(1) is Yes, state:
- Type of motion or petition: **Petition for Post-Conviction**
- Name and location of the court where the motion or petition was filed:
- Natrona County District Court, Seventh Judicial District  
115 North Center  
Casper, Wyoming 82601**
- Docket or case number (if you know): **CR-20865-A**
- Date of the court's decision: **1-16-2020**
- Result (attach a copy of the court's opinion or order, if available): **Denied. See Attached**
- (3) Did you receive a hearing on your motion or petition? \_\_\_ Yes **X No**
- (4) Did you appeal from the denial of your motion or petition? \_\_\_ Yes **X No**
- (5) If your answer to Question (d)(4) is Yes, did you raise this issue in the appeal? \_\_\_ Yes **X No**
- (6) If your answer to Question (d)(4) is Yes, state:
- Name and location of the court where the appeal was filed: **Not Applicable**
- Docket or case number (if you know): **Not Applicable**
- Date of the court's decision: **Not Applicable**
- Result (attach a copy of the court's opinion or order, if available): **Not Applicable**



(7) If your answer to Question (d)(4) or Question (d)(5) is No, explain why you did not raise this issue: **Due to filing Pro-Se and not being properly trained in the Legal Discipline, I was unaware of the fact that I could appeal the Petition for Post-Conviction Relief.**

- (e) Other Remedies: Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Three: **Appeal & Post-Conviction Relief**

**GROUND FOUR: No Other Grounds were raised**

- (a) Supporting facts (Briefly summarize your claim. You may provide additional argument and legal Citations in a separate supporting memorandum): **Not Applicable**

- (b) If you did not exhaust your state remedies on Ground Four, explain why: **Not Applicable**

- (c) Direct Appeal of Ground Four:

(1) If you appealed from the judgment of conviction, did you raise this issue? ☒ Yes ☐ No

(2) If you did not raise this issue in your direct appeal, explain why: **Not Applicable**

- (d) Post-Conviction Proceedings:

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state Trial court? ☐ Yes ☒ No

(2) If your answer to Question (d)(1) is Yes, state:

Type of motion or petition: **Not Applicable**

Name and location of the court where the motion or petition was filed: **Not Applicable**

Docket or case number (if you know): **Not Applicable**

Date of the court's decision: **Not Applicable**

Result (attach a copy of the court's opinion or order, if available): **Not Applicable**

(3) Did you receive a hearing on your motion or petition? ☐ Yes ☒ No

(4) Did you appeal from the denial of your motion or petition? ☐ Yes ☐ No

(5) If your answer to Question (d)(4) is Yes, did you raise this issue in the appeal? ☒ Yes ☐ No

(6) If your answer to Question (d)(4) is Yes, state:

Name and location of the court where the appeal was filed: **Not Applicable**

Docket or case number (if you know): **Not Applicable**

Date of the court's decision: **Not Applicable**

Result (attach a copy of the court's opinion or order, if available): **Not Applicable**

(7) If your answer to Question (d)(4) or Question (d)(5) is No, explain why you did not raise this issue: **Not Applicable**

(d) Other Remedies: Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Four: **Not Applicable**

13. Please answer these additional questions about the petition you are filing:

(a) Have all grounds for relief that you have raised in this petition been presented to the highest state court having jurisdiction? ☒ Yes ☐ No

If your answer is No, state which grounds have not been so presented and give your reason(s) for not presenting them: **Not Applicable**

(b) Is there any ground in this petition that has not been presented in some state or federal court? If so, which ground or grounds have not been presented, and state your reasons for not presenting them: **No**

14. Have you previously filed any type of petition, application, or motion in a federal court regarding the conviction that you challenge in this petition? ☐ Yes ☒ No

If Yes, state the name and location of the court, the docket or case number, the type of proceeding, the issues raised, the date of the court's decision, and the result for each petition, application, or motion filed. Attach a copy of any court opinion or order, if available.

15. Do you have any petition or appeal now pending (filed and not decided yet) in any court, either state or federal, for the judgment you are challenging? ☐ Yes ☒ No

If Yes, state the name and location of the court, the docket or case number, the type of proceeding, and the issues raised.

16. Give the name and address, if you know, of each attorney who represented you in the following stages of the judgment you are challenging:

(a) At preliminary hearing: **Kurt Infanger  
Wyoming Public Defender  
200 North Center  
Casper, Wyoming 82601**

(b) At arraignment and plea: **Same As Above**

(c) At trial: **Same As Above**

(d) At sentencing: **Same As Above**

(e) On appeal: **Lauren McLane  
University of Wyoming  
1000 East University Avenue Dept. 3035  
Laramie, Wyoming 82071**

(f) In any post-conviction proceeding: **Pro-Se**

(g) On appeal from any ruling against you in a post-conviction proceeding: **Not Applicable.**



17. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging? \_\_\_ Yes ☒ No

(a) If so, give name and location of court that imposed the other sentence you will serve in the future:  
**Not Applicable**

(b) Give the date the other sentence was imposed: **Not Applicable**

(c) Give the length of the other sentence: **Not Applicable**

(d) Have you filed, or do you plan to file, any motion, petition, or application that challenges the judgement or sentence to be served in the future? \_\_\_ Yes ☒ No

Please go to Question 18

18. **TIMELINESS OF PETITION:** If your judgment of conviction became final over one year ago, you must explain why the one-year statute of limitations as contained in 28 U.S.C. ' 2244(d) does not bar your petition.\*

\* The Antiterrorism and Effective Death Penalty Act of 1996 (**AEDPA**) as contained in 28 U.S.C. ' 2244(d) provides in part that:

(1) A one-year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court. The limitation period shall run from the latest of C

(A) the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review;

(B) the date on which the impediment to filing an application created by State action in violation of the Constitution or laws of the United States is removed, if the applicant was prevented from filing by such state action;

(C) the date on which the constitutional right asserted was initially recognized by the Supreme Court, if the right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or

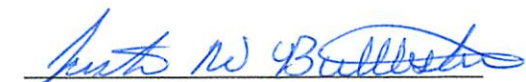
(D) the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence.

(2) The time during which a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending shall not be counted toward any period of limitation under this subsection.

Therefore, petitioner asks that the Court grant the following relief: **That the Judgment and Sentencing be vacated** or any other relief to which petitioner may be entitled.

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. I further declare under penalty of perjury that this Petition for Writ of Habeas Corpus was placed in the United States mailing system on the 9<sup>th</sup> day of September 2020. I attest that first-class postage has been prepaid.

Executed (signed) on the 9<sup>th</sup> day of September, 2020.

  
Justin Wade Bittleston